

TITLE 14. Fish and Game Commission

Notice of Proposed Changes in Regulations

**(Continuation of California Notice Register 2001, No. 39-Z,
and Meetings of August 3, 2001, October 4, 2001 and December 7, 2001.)**

(**NOTE:** Please note the changes shown in **bold** in: the Updated Informative Digest; the meeting date and location for the adoption hearing and deadlines for receipt of comments; and part (a) of the Impact of Regulatory Action.)

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 7071, 7075, 7078, 7083 and 7088 of the Fish and Game Code and to implement, interpret or make specific sections 2362, 7070, 7071, 7075, 7078, 7082, 7083, 7086, 7087, 7088, 8383, 8383.5 and 8623 of said Code, proposes to add sections 50.00, 50.01, 50.02 and 50.03 to new Article 1 and sections 51.00, 51.01, 51.02, 51.04 and 51.05 to new Article 2 of new Chapter 5.5, Division 1, add sections 155.01, 155.1 and 155.10 and amend Section 109, Title 14, California Code of Regulations, and make inoperative sections 8383 and 8383.5, Fish and Game Code, relating to the Fishery Management Plans (FMP), Generally, FMP Definitions, Purpose and Scope of the Plan, Actions Requiring Plan Amendment, Framework Review Processes, White Seabass Fishery Management Plan (Plan) Purpose and Scope, Definitions, Process and Timing, Allocation Factors, Harvest Control Rules (Optimum Yield Options), Adoption of White Seabass Commercial Laws Including Size Limit, Closed Season, Use of Purse Seine and Round Haul Nets, Delivery of White Seabass from Mexico, Gill Nets Used to Take White Seabass and Incidental Take of Thresher and Shortfin Mako Shark in White Seabass Drift Net.

Updated Informative Digest/Policy Statement Overview

Under existing law, the Fish and Game Commission (Commission) is authorized to regulate commercial and recreational fisheries for white seabass (Fish and Game Code Sections 200, 205, and 7071). The Marine Life Management Act of 1998 (MLMA) directs that fisheries be managed pursuant to fishery management plans and that a White Seabass Fishery Management Plan (White Seabass FMP or plan) that was developed and approved by the Commission in 1996 remain in effect until amended to conform with the MLMA. The MLMA further directs that the White Seabass FMP be amended on or before January 1, 2002, and that the Commission adopt implementing regulations not later than 60 days after the plan amendments are adopted by the Commission. The MLMA authorizes the Commission to regulate fisheries for white seabass and to make Fish and Game Code Statutes for white seabass inoperative.

Existing white seabass laws and regulations protect subadult and young adult white seabass through a 28-inch minimum size limit, a 3-fish daily bag and possession limit, commercial gear (net) restrictions (prohibition on use of round haul and minimum mesh size for gill and trammel nets), and an annual spring season fishing closure (March 15 through June 15) to protect adult spawning white seabass with a provision authorizing the take of one legal size white seabass during the spawning season closure by

sportfishing and one legal size white seabass if taken incidental to fishing with gill or trammel nets. Existing regulatory measures for white seabass have been adopted or adjusted (amended) during recent decades toward the goal of rebuilding white seabass stocks off California.

The proposed regulation changes would add new Chapter 5.5 dedicated to regulations implementing fishery management plans adopted pursuant to the MLMA. New Articles 1 and 2, of Chapter 5.5 would contain regulations that apply to fishery management plans in general (Article 1) and the White Seabass FMP in particular (Article 2). Several new Title 14 sections (50.00, 50.01, 50.02, 50.03, 51.00, 51.01, 51.02, 51.04, 51.05, 155.01, 155.1, and 155.10) are proposed to be added to, or amended (109) in Title 14, CCR. Fish and Game Code Section 8383 (the closed commercial white seabass season that was adopted in June 2000 as Section 155, Title 14, CCR) and Section 8383.5 (commercial white seabass minimum size limit) are proposed to be made inoperative in the Fish and Game Code. The proposed new regulations specify definitions that apply to management involving fishery management plans in general and the white seabass fishery specifically. Also, regulations describe the purpose and scope of the White Seabass FMP, where recreational and commercial regulations are located in Title 14, and the process and timing of white seabass monitoring. Proposed regulations authorize the director to appoint a White Seabass Scientific and Constituent Advisory Panel (WSSCAP), describes general criteria for membership on the WSSCAP, describes the general timing and processes for developing, considering, and adopting regulatory changes associated with white seabass fishery management, plan amendment, determination of harvest guidelines, including optimum yields, and considerations that guide white seabass allocation.

More specifically, the regulations would:

- 1) Add Section 50.00 to Article 1 of new Chapter 5.5 describing the location of regulations applicable to sport fishing, commercial fishing, and a fishery management plan for a species or species group.
- 2) Add Section 50.01 containing 24 definitions, **including a minor revision to the definition of Acceptable Biological Catch**, that apply generally to fishery management plans and related fisheries management measures (unless defined otherwise in regulations specific to a fishery management plan), and specifies that definitions found in Chapter 1 of Title 14, CCR, and Chapters 1 and 2 of Division 0.5 of the Fish and Game Code will apply to FMPs where not in conflict with definitions found in an FMP.
- 3) Add Section 50.02 describing changes in management measures and actions that trigger the need for amendment of an FMP.
- 4) Add Section 50.03 describing three processes for taking management action to implement routine annual changes in management that range from a “prescribed action” involving no public notice where regulatory guidelines are first adopted by the Commission, to a “full rulemaking action” involving at least three Commission meetings to hear, consider, and approve measures.
- 5) Add Section 51.00 to Article 2 of new Chapter 5.5 describing the purpose and scope of the White Seabass FMP, the location in Title 14 of white seabass sport and commercial fishing provisions, and specifies that where white seabass weight is given for white seabass, the weight is in pounds round weight or round-weight equivalent.

- 6) Add Section 51.01 with definitions for *Fishing year*, *overfished stock*, *points of concern*, *points of concern process*, *socio-economic benefits*, *white seabass*, *white seabass fishery*, and *White Seabass Fishery Management Plan*, that are specific to the White Seabass FMP.
- 7) Add Section 51.02 that directs that white seabass management is to conform to the goals, objectives, criteria, and procedures of the White Seabass FMP, specifies that monitoring of fishing is done annually, authorizes the Director to appoint a White Seabass Scientific and Constituent Advisory Panel (WSSCAP), directs that regulations remain in force until amended or repealed by the Commission, and sets a general time line for annual development and adoption of specifications and management measures.
- 8) Add Section 51.04 which directs that white seabass fishery allocations be based on a ratio specified in the plan, describes factors **that, at a minimum, will be considered** during a change in allocation of white seabass, and provides that modification of a direct allocation to a fishery may be “a routine management measure where criteria are adopted in regulation.
- 9) Adds Section 51.05 describing four possible options, and **four** suboptions, for harvest control rules with all but one option involving the determination of an optimum yield for the fisheries **ranging from 283,979 and 1.3 million pounds**.
- 10) Adds Section 155.01 that adopts as a regulation the current 28-inch commercial minimum size limit for white seabass that presently is contained in Fish and Game Code Section 8383.5, and make Section 8383.5 inoperative.
- 11) Adds Section 155.1 that adopts as regulation current restrictions of Fish and Game Code Sections 2362 and 8623, on the use of purse seine and other round haul nets off California, and adopts the language of Section 109, Title 14, CCR as Subsection (d) of proposed Section 155.1 regarding requirements for delivery, inspection, and clearance of white seabass on a vessel carrying a purse seine or other round haul net.
- 12) Adds Section 155.10 that adopts as regulations current requirements of Fish and Game Code Sections 8623 and 8576 governing vessels landing white seabass with gill nets, including minimum mesh size, incidental take of white seabass during the season closure, and the incidental take of thresher and shortfin mako shark in drift gill nets when fishing for white seabass.
- 13) Remove reference to white seabass from Section 109 to avoid duplication with proposed new Section 155.1(subsection d).
- 14) Makes inoperative Fish and Game Code Sections 8383 and 8383.5 because they will now appear in regulations of Title 14, CCR.

Based on a review of public input and comments provided on the WSFMP by a peer review panel that reviewed the plan, three changes (shown in bold in the above summary of proposed changes) were made to the originally proposed regulatory language for purposes of clarity and conservative management of white seabass in the absence of direct stock abundance estimates. These changes include a change in the proposed definition of *Allowable Biological Catch (ABC)* to clarify that *ABC* means “allowable catch” in addition to the originally proposed “range of allowable catch”, and a modification in the definition to reflect that the *ABC* is set by the “Commission and is based on recommendations of the Department or other scientific advisors in proposed Subsection 50.01(a). Secondly, the proposed “Allocation” regulation for white

seabass is amended to provide for allocation in weights other than pounds if needed, and to clarify that criteria to be considered by the Commission when allocating harvests are to be “at least” those criteria included under the allocation section proposed as subsections 51.04(a) and (b). Finally, the regulatory changes would add a suboption (B2) to the originally proposed four options under Harvest Control Rules that would set the maximum pounds of white seabass that may be taken in the sport and commercial fisheries at 1.2 million pounds. The 1.2 million pounds of new option B2 is intermediate between the options originally proposed that range from no ceiling on annual harvests [Status Quo under Option A of Section 51.05(a)(1)], to 283,979 pounds [under Suboption C3 of Section 51.05(a)(3)].

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the **City Council Chambers, 333 W. ocean Boulevard, Long Beach, CA, on Friday, April 5, 2002, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments may be submitted on or before March 29, 2002, at the address given below, or by fax at (916) 653-5040, or by e-mail to jduffy@dfg.ca.gov, but must be received no later than April 5, 2002 at the hearing in Long Beach.** E-mail comments must include the true name and mailing address of the commentor.

The regulations as proposed in ~~strikeout~~-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based, are on file and available for public review from the agency contact person, John M. Duffy, Assistant Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct inquiries to John M. Duffy or Tracy L. Reed at the preceding phone number. Don Schultze, (916) 227-5670, Department of Fish and Game, has been designated to respond to questions on the substance of the proposed regulations. Copies of the statement of reasons, including the regulatory language, may be obtained from the above address.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from agency program staff.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial

determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, including the Ability of California Businesses to Compete with Businesses in Other States:

The Proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

No changes are being proposed at this time in season, size , bag, and gear provision in conjunction with adoption of White Seabass FMP implementing regulations. Therefore, there are no expected economic impacts associated with adoption of those provisions as regulations.

The original Notice of Proposed Change in Regulations and Initial Statement of Reasons in support of adoption of implementing regulations, included a discussion of a sport/commercial allocation ratio for annual white seabass catches that would have allocated 55 percent of annual harvest to the sport fishery, and 45 percent to the commercial fishery. An allocation ratio becomes a factor in adopting management restriction only at the point where the total annual harvest (optimum yield or OY) for both fisheries is reached during a year, which is not expected to occur in the white seabass fisheries for a number of years. The current preferred harvest control rule, Option B2, of proposed Section 51.05, would set the ceiling for annual harvest at 1.2 million pounds, a level of harvest above current total white seabass harvests.

No allocation ratio is proposed as a part of these White Seabass FMP implementing regulations. However, a discussion of the potential impacts of such an allocation was provided in the original Notice of Proposed Changes in Regulations, and in a discussion of impacts in the Initial Statement of Reasons because of potential future impacts of allocation on the fisheries should catches increase in the future and should catches be allocated in the 55:45 harvest ratio which had been tentatively discussed during ad hoc White Seabass Advisory Committee meetings prior to the initial Publication of Notice of the regulations. Subsequent to the original publication of notice of the regulation changes, consideration of a specific allocation ratio for use in the future was discouraged by the Advisory Committee and concurred in by the Department at this time, even though, as indicated above, no reference to an allocation ratio was included in the White Seabass FMP or the proposed implementing regulations. Rather, development of an allocation ratio was encouraged following adoption of the White Seabass FMP and implementing regulations, and following the establishment of the White Seabass Scientific and Constituent Advisory Panel.

Due to the likelihood that allocation of white seabass annual harvests will not be needed for a period of years, and that a 55:45 percent allocation ratio of white seabass annual harvests between fisheries is not being considered at this time, a discussion of the potential effects of that allocation was eliminated. Consequently, there is no expected significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

No other significant effects of the proposed regulatory changes, economic or otherwise, are anticipated on jobs, representative private persons or businesses, costs or savings to State agencies or costs/savings in Federal funding to the state, nondiscretionary costs/savings to local agencies, programs mandated on local agencies or school districts, costs imposed on any local agency or school district that is required to be reimbursed under Part 7 of Division 4, and effects on housing costs, as indicated in the Initial Statement of Reasons.

(b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.

(c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

(d) Costs or Savings to State agencies or Costs/Savings in Federal funding to the State: None.

(e) Nondiscretionary Costs/Savings to Local Agencies: None.

(f) Programs Mandated on Local Agencies or School Districts: None.

(g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.

(h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

John M. Duffy
Assistant Executive Director

Date: February 5, 2002